

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

KFC CORPORATION,) Case Nos. 3:10 CV 00969
) 3:10 CV 00975
Plaintiff,)
) Judge David A. Katz
-vs-)
) AGREED JUDGMENT ENTRY
LIMA "D" BROS., INC., et al.,)
)
Defendants.)

* * *

Plaintiff KFC Corporation ("KFCC") and Lima "D" Bros., Inc., Van Wert "D" Bros., Inc., Patricia Dempsey and Daniel Dempsey (collectively, the "Defendants"), having reached an agreement for the resolution of their claims ("Agreed Judgment"), as evidenced by their signatures or by the signatures of their authorized representatives, and the Court being advised by the pleadings, KFC's Motion and Memorandum in Support of a Preliminary Injunction, KFC's Supplemental Brief in Support of Motion for Preliminary Injunction, and the evidence presented at the preliminary injunction hearing held June 1, 2010, hereby **ORDERS**,

ADJUDGES, AND DECREES:

1. The franchise agreements for the Defendants' two restaurants located at (1) Summit Street, U.S. 118 in Van Wert, Ohio; and (2) 2723 Elida Road in Lima Ohio (collectively, the "Franchise Agreements" and the "Restaurants") were validly terminated,

effective February 15, 2010, in accordance with the Reinstatement and Reinstated Franchise Agreements referenced in and attached to KFCC's Complaint.

2. This action was commenced by KFCC's filing of a complaint against Defendants for injunctive relief, declaratory judgment, and monetary damages for breach of contract and trademark infringement on April 29, 2010 ("Complaint"). This Action also includes the Defendants' complaint, which was originally filed in the Court of Common Pleas, Allen County, Lima, Ohio [Case No. CV2010 0407], removed to this Court [Civil Action No. 3:10-CV-00975] and subsequently consolidated with the above captioned matter. By agreement of the parties, and in consideration for all the Defendants' obligations in this Agreed Judgment, the parties have agreed to the following:

A. On or before June 18, 2010 (the "Closing Deadline"), Defendants agree to and are hereby required to comply with all Post-Termination Obligations as stated in the Reinstatement Agreements, paragraph IV, Complaint Exhibit 1, and the Reinstated Franchise Agreements, paragraph 3.4, Complaint Exhibit 2, including but not limited to:

- i. Close and de-image the Restaurants and cease doing business as a KFC Restaurant;
- ii. Return to KFCC the KFC Confidential Manual, together with all other materials containing any of KFCC's trade secrets, confidential materials, operating instructions or business practices used in the Restaurants;
- iii. Discontinue the use of any and all service marks, trademarks and trade names of KFC and KFCC, and the use of any and all signs, menu board inserts, point of sale materials and printed goods bearing such marks or names or any reference thereto;
- iv. De-image (i.e., renovate, refurbish, and or modify) the interior and exterior of the Restaurants sufficiently to comply with all Post-Termination Obligations set forth in the Reinstated Franchise

Agreements regarding renovations and or modifications to the existing structure upon termination;

- v. Cease operating or doing business under any name or in any manner that might tend to give the general public the impression that the franchise with KFC is still in force, or that the Restaurants or licensees are in any way connected with KFC or authorized to use KFC's trademarks;
- vi. Cease making or using any of the trade secrets, trademarks of KFC, or information imparted by KFC, including the system of food preparation, and do not assist, disclose or reveal any such confidential and proprietary information or any portion thereof to others; and
- vii. Relinquish the telephone number(s) and any internet web site and domain name web address associated with KFC.

B. During the period that Defendants continue to operate the Restaurants, all royalty and advertising fees due to KFCC will be timely paid and all monthly sales reports will be timely sent, both pursuant to the terms of the Reinstatement Agreements. Defendants agree to comply with all other terms of the Reinstatement Agreements, including, without limitation, all operational, health, and safety standards.

C. Within forty-eight (48) hours after the Closing Deadline (or no later than June 21, 2010), Defendant Daniel Dempsey shall submit to co-counsel for KFCC, Peggy Grant, the statement of Gross Revenues for both Restaurants as required by the Reinstated Franchise Agreements, paragraph 8.2 for the months ending December 31, 2008, January 31, 2009, March 31, 2010, April 30, 2010, May 31, 2010, and June 2010 through the date of closing. Counsel for Daniel Dempsey, Randy Reeves, consents to, and in no way objects to, direct communication as between Daniel Dempsey and Peggy Grant for the purpose of submitting the statement of Gross Revenues as stated in this paragraph.

D. The Defendants shall file with the Court and serve on KFCC's counsel within fifteen (15) days after the Closing Deadline (or no later than July 5, 2010), a status report to the Court setting forth in detail the manner in which the Defendants have complied with their obligations under their Reinstatement Agreements and this Agreed Judgment to close and de-image the Restaurants.

E. Defendants, jointly and severally, are liable to KFCC for all royalties due to KFCC and all advertising fees due to the National Co-Op for the time during which the Defendants operated the Restaurants as KFC restaurants and did not pay such royalties and advertising fees as required by the Reinstated Franchise Agreements, paragraphs 8.1, 10.1, Complaint Exhibit 2, and the Reinstated Advertising Agreements, paragraph 2(a), Complaint Exhibit 3.

F. Within sixty (60) days after the Closing Deadline (or no later than August 20, 2010), Defendants shall pay by certified check to co-counsel for KFCC, Peggy Grant, all due and unpaid royalties and advertising fees as required by subsection (e) above of this Agreed Judgment. If Defendants contend that they have paid the required royalties and advertising fees for any of the months specified in subsection (c) above of this Agreed Judgment, the Defendants shall submit proof of such payment to co-counsel for KFCC, Peggy Grant, on or before June 21, 2010. Counsel for Defendants, Randy Reeves, consents to, and in no way objects to, direct communication between Defendants and Peggy Grant for the purpose of submitting proof of payment as stated in this paragraph.

G. The parties agree that they shall not knowingly say or do anything which will disparage or diminish the goodwill and reputation of the other parties, their employees, distributors and dealers, affiliates or their businesses, either in the view of the public or their customers, or that would otherwise defame, disparage, damage or injure the reputation of the parties, including, but not limited to, negatively commenting on, disparaging, accusing or suggesting that the other party has engaged in any form of tortious, wrongful or illegal conduct of any sort, relating to this Agreed Judgment, the agreements and relationship of the parties, the subject matter and resolution of the Complaint and this action, and business operations and conduct of the parties and their past or present directors, executives, officers or agents, except as required by law or as necessary for him/it to defend himself/itself in any civil, criminal, administrative, judicial or arbitral proceeding.

H. The Defendants shall comply with the noncompetition provision contained in the Reinstatement Agreements, paragraph IV G, Complaint Exhibit 1, and the Reinstated Franchise Agreements, paragraph 15.1, Complaint Exhibit 2, which requires that the Defendants will not operate any similar business within ten (10) miles of the Restaurants for a continuous, uninterrupted period of twelve (12) months. The twelve (12) month period of noncompetition shall begin on the date the Defendants close and completely de-image the Restaurants.

I. Defendant Daniel Dempsey shall execute the Easements, attached as Exhibit A to this Agreed Judgment, on behalf of property owners P&D Lima, Ltd. and Dempseys Diversified, and in favor of KFCC and its agents, authorized representatives, successors and assigns. Defendant Daniel Dempsey shall execute the Easements on or

before Friday, June 11, 2009, and will immediately forward to counsel for KFCC, Rebecca E. Shope, originals of the executed Easements. Said easements are for the purpose of allowing KFCC or a party on their behalf to de-image the stores in the event the Defendants do not de-image the same pursuant to paragraph 2(A) above. KFCC will be entitled to judgment against the Defendants for the cost of de-imaging the stores upon the filing of an affidavit with the Court setting forth said costs.

J. If Defendants fail to pay franchise fees, royalties, and advertising fees as required above, then KFCC will be entitled to judgment for such outstanding amounts by the filing of an affidavit with the Court.

K. If Defendants fail to comply with Post-Termination Obligations on or before the Closing Date, and KFCC is thereafter required to take measures to ensure such compliance by Defendants, then KFCC shall be entitled to the costs associated with such compliance, including without limitation, any costs of de-imaging and all actions authorized in the easement granted herein, and will be entitled to judgment for such amounts by the filing of an affidavit with the Court.

L. Within ten (10) days of the Closing Deadline, KFCC shall submit its motion for the attorneys' fees and court costs KFCC has expended for this lawsuit, with appropriate back up documentation, as authorized by the parties' agreements. Defendants shall have seven (7) days from the date KFC files its motion to file their response.

M. This Court shall retain jurisdiction over the actions and parties' obligations required by this Agreed Judgment. If all obligations are timely satisfied, the parties will

file a motion to dismiss all of their claims in both cases (3:10-CV-00969 and 3:10-CV-00975) with prejudice. If all obligations are not timely satisfied, the Court shall retain jurisdiction to enter any such further orders as are requested by the parties to enforce such obligations.

N. In the event it becomes necessary for KFCC to enforce its rights granted by this Agreed Judgment, in addition to execution against Defendants for the outstanding amounts due on this Agreed Judgment, KFCC shall also be entitled to recover the reasonable attorneys' fees, court costs and all of KFCC's expenses in connection with enforcement of this Agreed Judgment.

O. The Defendants acknowledge the opportunity to review this Agreed Judgment with counsel of their choice and represent that they have taken as much time as they deem necessary to review and fully understand this Agreed Judgment before signing it.

P. The parties' counsel have negotiated this Agreed Judgment and the parties agree that it shall not be construed against KFCC in the event of any dispute regarding the terms of this Agreed Judgment or action to enforce its terms.

Q. Time is of the essence, and the deadlines established in this Agreed Judgment are material terms of the parties' agreement.

IT IS SO ORDERED this 10th day of June, 2010

s/ David A. Katz

JUDGE KATZ
UNITED STATES DISTRICT COURT

AGREED TO:

/s/ Rebecca E. Shope

Peter R. Silverman (0001579)
Rebecca E. Shope (0083942)
SHUMAKER, LOOP & KENDRICK, LLP
North Courthouse Square
1000 Jackson Street
Toledo, Ohio 43604
Telephone: (419) 241-9000
Fax: (419) 241-6894
E-Mail: psilverman@slk-law.com
rshope@slk-law.com

On behalf of and as co-counsel for Plaintiff,
KFC Corporation

/s/ Randy Reeves

Randy Reeves (0009934)
973 West North Street
Lima, Ohio 45804
Telephone: (419) 228-2122
Fax: (419) 222-6718
E-Mail: randy@reeveslpa.com

On behalf of and as counsel for Defendants,
Lima "D" Bros., Inc., Van Wert "D" Bros.,
Inc., Patricia Dempsey, and Daniel Dempsey

/s/ Margaret R. Grant

Margaret R. Grant
Charles J. Cronan, IV
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400
E-Mail: pgrant@stites.com
ccronan@stites.com

On behalf of and as co-counsel for Plaintiff,
KFC Corporation

EASEMENT

It is hereby agreed that P&D Lima, Ltd. ("Grantor") for One (\$1.00) Dollar and other good and valuable consideration paid by KFC Corporation ("Grantee" or "KFCC"), and pursuant to the attached Agreed Judgment Entry, does grant, with general warranty covenants, to Grantee, Grantee's agents, Grantee's authorized representatives, and Grantee's successors and assigns, a temporary, non-exclusive, affirmative easement ("Easement") over, upon and across 2723 Elida Road, Lima, Ohio 45807 ("Property"), Parcel No. 36220301001000, more fully described on Exhibit A, the legal property description, attached hereto and incorporated herein.

The Easement granted shall be used only for ingress and egress to, from and across Grantor's property for the purpose of allowing Grantee and/or its agents and representatives to take such actions with respect to the Property as may be necessary to satisfy and/or comply with the Post-Termination Obligations of Lima "D" Bros., Inc., Van Wert "D" Bros., Inc., Patricia Dempsey, and Daniel Dempsey as stated in the Agreed Judgment Entry, attached as Exhibit B, including but not limited to (i) closing and de-imaging the KFC Restaurant and ceasing business as a KFC Restaurant; (ii) returning to

KFCC the KFC Confidential Manual, together with all other materials containing any of KFCC's trade secrets, confidential materials, operating instructions or business practices used in the Restaurants; (iii) discontinuing the use of any and all service marks, trademarks and trade names of KFC and KFCC, and the use of any and all signs, menu board inserts, point of sale materials and printed goods bearing such marks or names or any reference thereto; (iv) de-imaging (i.e., renovating, refurbishing, and or modifying) the interior and exterior of the KFC Restaurants sufficiently to comply with all Post-Termination Obligations set forth in the Reinstated Franchise Agreements regarding renovations and or modifications to the existing structure upon termination; (v) ceasing operations or doing business under any name or in any manner that might tend to give the general public the impression that the franchise with KFC is still in force, or that the restaurant or licensees are in any way connected with KFC or authorized to use KFC's trademarks; (vi) ceasing making or using any of the trade secrets, trademarks of KFC, or information imparted by KFC, including the system of food preparation, and stopping the disclosure or revelation of any such confidential and proprietary information or any portion thereof to others; and (vii) relinquishing the telephone number(s) and any internet web site and domain name web address associated with KFC.

Grantor and its heirs, agents, representatives and assigns shall not obstruct the Grantee's entry (or the entry of Grantee's agents, authorized representatives, successors, and assigns) onto the Property for the purposes allowed hereunder.

The rights granted hereunder shall be binding on and shall run with the land and inure to the benefit of the representatives, successors, and assigns of the

Grantor and the Grantee. This agreement shall terminate upon the completion and satisfaction of the Post-Termination Obligations as stated herein.

IN WITNESS WHEREOF, this instrument is executed this _____ day of June, 2010.

P&D Lima, Ltd.

By: Daniel Dempsey, its _____

State of Ohio)
)
) SS.
County of _____)

Sworn to before me and subscribed in my presence this _____ day of
_____, 2010.

Notary Public

EASEMENT

It is hereby agreed that Dempseys Diversified ("Grantor") for One (\$1.00) Dollar and other good and valuable consideration paid by KFC Corporation ("Grantee" or "KFCC"), and pursuant to the attached Agreed Judgment Entry, does grant, with general warranty covenants, to Grantee, Grantee's agents, Grantee's authorized representatives, and Grantee's successors and assigns, a temporary, non-exclusive, affirmative easement ("Easement") over, upon and across 1112 S Shannon Street, Van Wert, Ohio 45891 ("Property"), Parcel No. 12-029388.0100, more fully described on Exhibit A, the legal property description, attached hereto and incorporated herein.

The Easement granted shall be used only for ingress and egress to, from and across Grantor's property for the purpose of allowing Grantee and/or its agents and representatives to take such actions with respect to the Property as may be necessary to satisfy and/or comply with the Post-Termination Obligations of Lima "D" Bros., Inc., Van Wert "D" Bros., Inc., Patricia Dempsey, and Daniel Dempsey as stated in the Agreed Judgment Entry, attached as Exhibit B, including but not limited to (i) closing and de-imaging the KFC Restaurant and ceasing business as a KFC Restaurant; (ii) returning to

KFCC the KFC Confidential Manual, together with all other materials containing any of KFCC's trade secrets, confidential materials, operating instructions or business practices used in the Restaurants; (iii) discontinuing the use of any and all service marks, trademarks and trade names of KFC and KFCC, and the use of any and all signs, menu board inserts, point of sale materials and printed goods bearing such marks or names or any reference thereto; (iv) de-imaging (i.e., renovating, refurbishing, and or modifying) the interior and exterior of the KFC Restaurants sufficiently to comply with all Post-Termination Obligations set forth in the Reinstated Franchise Agreements regarding renovations and or modifications to the existing structure upon termination; (v) ceasing operations or doing business under any name or in any manner that might tend to give the general public the impression that the franchise with KFC is still in force, or that the restaurant or licensees are in any way connected with KFC or authorized to use KFC's trademarks; (vi) ceasing making or using any of the trade secrets, trademarks of KFC, or information imparted by KFC, including the system of food preparation, and stopping the disclosure or revelation of any such confidential and proprietary information or any portion thereof to others; and (vii) relinquishing the telephone number(s) and any internet web site and domain name web address associated with KFC.

Grantor and its heirs, agents, representatives and assigns shall not obstruct the Grantee's entry (or the entry of Grantee's agents, authorized representatives, successors, and assigns) onto the Property for the purposes allowed hereunder.

The rights granted hereunder shall be binding on and shall run with the land and inure to the benefit of the representatives, successors, and assigns of the

Grantor and the Grantee. This agreement shall terminate upon the completion and satisfaction of the Post-Termination Obligations as stated herein.

IN WITNESS WHEREOF, this instrument is executed this _____ day of June, 2010.

Dempseys Diversified

By: Daniel Dempsey, its _____

State of Ohio)
)
) SS.
County of _____)

Sworn to before me and subscribed in my presence this _____ day of
_____, 2010.

Notary Public